

UNITED STATES OF AMERICA
UNITED STATES COAST GUARD vs.
MERCHANT MARINER'S LICENSE NO. 37602
Issued to: Michael James BARRIOS

DECISION OF THE VICE COMMANDANT ON APPEAL
UNITED STATES COAST GUARD

2387

Michael James BARRIOS

This appeal has been taken in accordance with 46 U.S.C. 7702 and 46 CFR 5.30-1.

By order dated 10 February 1984, an Administrative Law Judge of the United States Coast Guard at New Orleans, Louisiana, suspended Appellant's license for one month plus an additional three months remitted on twelve months probation upon finding proved the charge of misconduct. The specification found proved alleged that Appellant while serving as Operator on board the M/V KATIE CHERAMIE under authority of the license above captioned, on or about 20 December 1983, while underway in Lake Wimico, Jackson River and Apalachicola River, Florida, did relinquish the actual direction and control of said vessel to a person not licensed by the Coast Guard as an operator or second-class operator of uninspected towing vessels; a violation of 46 CFR 157.30-45.

The hearing was held at New Orleans, Louisiana, on 1 February 1984.

At the hearing, Appellant was represented by professional counsel, and entered a plea of not guilty to the charge and specification.

The Investigating Officer introduced in evidence two exhibits and the testimony of one witness.

In defense, Appellant offered in evidence his own testimony.

After the end of the hearing, the Administrative Law Judge rendered a written Decision and Order in which he concluded that the charge and specification had been proved. He then served the written decision and order on Appellant suspending License No. 37602 for a period of one month plus three months on 12 months' probation.

The Decision and Order was served on 22 February 1984. Appeal was timely filed and perfected on 27 February 1984.

FINDINGS OF FACT

On 20 December 1983 Appellant was serving as Operator on board the M/V KATIE CHERAMIE, and acting under authority of his license while the vessel was underway on the Apalachicola River, with a tow consisting of two cement barges. At approximately 0030 on 20 December 1983 Appellant relinquished control of the M/V KATIE CHERAMIE and her tow to Linton Anthony Dardar who was serving as an unlicensed "mate." Appellant then left the wheelhouse, went to his cabin, and went to bed. Mr. Dardar holds no license authorizing him to operate uninspected towing vessels, and has no formal training as to operating this type of vessel. He was not given any directions or instructions for navigating the Apalachicola River on the evening in question.

At approximately 0300 20 December 1983, approximately 2 1/2 hours after Appellant turned over watch to Mr. Dardar, the lead barge of the M/V KATIE CHERAMIE's tow allided with the Apalachicola railroad bridge fender system.

BASES OF APPEAL

This appeal is taken from the order imposed by the Administrative Law Judge. It is urged that Appellant should not be held responsible for turning direction and control of the vessel over to an unlicensed individual because the owner of the vessel rather than Appellant as Operator is the person responsible for insuring the proper manning of the vessel.

APPEARANCE: W.J. Larzelere, Jr., Attorney at Law, 600 Carondelet Street, New Orleans, Louisiana 70130

OPINION

Appellant urges that since the manning requirements for uninspected towing vessel are primarily the responsibility of the owner and not that of the Operator, he should not be held responsible for turning over direction and control of the vessel to an unlicensed individual. I do not agree.

The result in this case is controlled by Appeal Decision 2292 (COLE) in which I held that the Operator of an uninspected towing vessel is properly held responsible for turning over direction and control of the vessel to an unlicensed individual. I will not repeat the analysis in COLE here.

The Operator of an uninspected towing vessel is responsible for the safe operation of that vessel during the time that he is on

watch. This includes insuring that the vessel is in both a safe and legal condition when he relinquishes direction and control. It would be obviously improper for an Operator to leave the wheelhouse of a vessel at the end of his watch without a relief, leaving the vessel underway with no one in the wheelhouse. It is also improper for him to leave the wheelhouse at the end of his watch with the vessel underway and no legally qualified operator in control.

Appellant further asserts that it is unreasonable to hold him responsible for turning over direction and control to the unlicensed Mr. Dardar because, had he failed to do so, he may well have lost his job. Although this may be true, it does not excuse Appellant participation in permitting the illegal operation of the M/V KATIE CHERAMIE.

II

Appellant further urges that the sanction is excessive. I do not agree.

Appellant as the Operator of the vessel, had a heavy responsibility for its safety and legal operation. Turning over direction and control to an unqualified individual is a serious breach of that responsibility. The hazard to commerce, the maritime community, and maritime environment caused by such action is apparent from the allision that ultimately resulted.

Appellant further asserts the hardship that will result to him from loss of employment. This, however, is not cause to reduce an otherwise reasonable order. Appeal Decision 2323 (PHILPOTT). Considering the seriousness of the offense and danger created by it, I find that the Administrative Law Judge's order is entirely reasonable.

CONCLUSION

The findings of the Administrative Law Judge are supported by substantial evidence of a reliable and probative nature. The hearing was conducted in accordance with the requirements of applicable regulations. The sanction imposed is not excessive.

ORDER

The order of the Administrative Law Judge dated at New Orleans, Louisiana, on 10 February 1984 is AFFIRMED.

B.L. STABILE
Vice Admiral, U.S. Coast Guard
VICE COMMANDANT

Signed at Washington, D.C., this 23rd day of April 1985.